



CENTER FOR
FOOD SAFETY

June 17, 2022

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

SUBMITTED VIA ONLINE SUBMISSION FORM

RE: Freedom of Information Act Request

To the U.S. Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) national non-profit public interest and environmental advocacy organization working to protect human health and the environment by curbing the use of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. CFS, through its Pollinators & Pesticides Campaign, works to protect pollinators, human health, animal health, and the environment from the harm of toxic pesticide use in industrial agriculture. Consistent with CFS's mission and pursuant to 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552, CFS respectfully requests the following information:

Any and all documents related to EPA's consideration of adjusting the definition of PFAS to include fluorinated pesticides and the application of EPA's PFAS Strategic Roadmap to review of fluorinated pesticides from January 2020 until now.

"Any and all documents" includes, but is not limited to, all communications, correspondence, minutes, memoranda, maps, plans, drawings, emails, reports, databases, and notes. This request includes all documents that have ever been within your custody or control, whether produced by you or by any others, and includes all current and former working, investigative, retired, electronic, and/or other files.

This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

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REQUEST FOR FEE-WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

The factors EPA must consider in deciding upon a fee waiver request are laid out in 40 C.F.R. § 2.107(l)(2), and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

- (i) Whether the subject matter of the request concerns the operations or activities of the government.
- (ii) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
- (iii) Whether disclosure will contribute to a reasonably broad audience of persons interested in the subject.
- (iv) Whether the contribution to public understanding is significant.

See 40 C.F.R. § 2.107(l). These factors are to be balanced against one another; no one factor is determinative. See *Friends of the Coast Fork v. U.S. Dep't of Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

The other requirements in the regulations—related to whether the requester has a commercial interest that outweighs a public interest motivation—are not applicable to CFS and this request. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. See, e.g., OMB Fee Guidelines, 52 Fed. Reg. 10017-18; see also 40 C.F.R. § 2.107(b)(1). Such interests are not present in this request. CFS does not seek information from EPA for commercial gain or interest.

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. See 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. THE PRESENT DISCLOSURE IS IN THE PUBLIC INTEREST BECAUSE IT WILL SIGNIFICANTLY CONTRIBUTE TO PUBLIC UNDERSTANDING OF THE OPERATIONS OR ACTIVITIES OF GOVERNMENT.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

A. The subject of the disclosure concerns “the operations and activities of the government.”

The requested information pertains to EPA’s consideration of expanding its definition of PFAS to include fluorinated pesticides and reviewing them in accordance with its Roadmap. It is irrefutable that EPA’s classification and review of fluorinated pesticides are clearly identifiable operations of the government. *See* 40 C.F.R. § 2.107(l)(2)(i). This disclosure will demonstrate to the public at large which chemicals EPA defines as PFAS and how the agency will review fluorinated pesticides moving forward.

B. The disclosure is “likely to contribute” to an understanding of government operations or activities.

As discussed in the previous section, the present disclosure will provide the public a better understanding of EPA’s regulatory decisions pertaining to fluorinated pesticides. The requested records will meaningfully inform the public about these government operations or activities in a way not currently available in the public domain. *Id.* § 2.107(l)(2)(ii).

C. The disclosure will contribute to “public understanding” of a reasonably broad audience of persons interested in the subject.

This disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the regulation of fluorinated pesticides as PFAS. *Id.* § 2.107(l)(2)(iii). CFS is a member-oriented non-profit organization with over one million members that works to address the impacts of the food system on human health, animal welfare, and the environment. Through over a decade of involvement in environmental litigation and policymaking as it relates to food, CFS has demonstrated its ability to take technical information provided by government agencies and distill it into a format that is accessible to the public.

CFS educates and counsels the public—via online action alerts, legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, Food Safety Now!—on the harm done to human health, animal welfare, and the environment by industrial agriculture. Accordingly, CFS is an effective vehicle to disseminate information on pesticides and their impacts on pollinators, human health, animal health, and the environment.

D. The disclosure is likely to contribute “significantly” to public understanding of government operations or activities.

The disclosure is likely to contribute significantly to public understanding of EPA's regulatory decisions pertaining to fluorinated pesticides as PFAS, as compared to the level of public understanding existing prior to the disclosure. 40 C.F.R. § 2.107(l)(2)(iv).

CFS employs science and policy experts who have analyzed FOIA, NEPA, FIFRA, and other environmental and scientific reports for their entire careers. CFS puts out reports on pesticides, genetically engineered foods, food and feed additives, and other topics that tend to be difficult for the layperson to understand without professional assistance.¹ More specifically, CFS has been engaged in ongoing efforts to educate our members and the public about the ongoing harms to pollinators, human health, animal health, farmers, and the environment from the toxicity and drift of pesticides. To that end, disclosure will result in an enhanced public understanding of EPA's regulatory decisions pertaining to the use and labeling of pesticides. This disclosure is particularly relevant as the documents and communications regarding the registration of fluorinated pesticides as PFAS will potentially shed light on the agency's decisions.

II. OBTAINING THE INFORMATION IS OF NO COMMERCIAL INTEREST TO CENTER FOR FOOD SAFETY.

The Center for Food Safety is a 501(c)(3) non-profit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from the EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on EPA's regulation of pesticides. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA as a result of this request.

Based upon the foregoing, CFS requests that this FOIA be classified within the EPA's fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact me to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

¹ *See* Publications & Resources, Center for Food Safety, <http://www.centerforfoodsafety.org/reports>.

Please send all materials to mstevenson@centerforfoodsafety.org. Electronic materials are preferred but if records must be mailed, please send to 303 Sacramento Street, 2nd Floor, San Francisco, CA 94111. Please call me at 574-309-5620 or email me at mstevenson@centerforfoodsafety.org if you have any further questions about this request. Thank you for your attention to this request.

Sincerely,

/s/ Meredith Stevenson

Meredith Stevenson

Staff Attorney

Center for Food Safety

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